

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCKET #

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U.S. DISTRICT COURT
WEST DIST. OF WISCONSIN

NEIL GAIMAN and
MARVELS AND MIRACLES, LLC,

OCT - 7 2002

Plaintiffs,

FILED

JOSEPH W. SKUBEN, CLERK
CASE # 02-C-48-S

v.

TODD MCFARLANE,
TODD MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
MCFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

1. Does plaintiff Neil Gaiman have a copyright interest in the following? (answer yes or no to each)

Medieval Spawn:

Yes

Cogliostro:

Yes

Spawn issue 26:

Yes

2. Would a reasonable person in plaintiff Gaiman's position have discovered prior to January 24, 1999, that the McFarlane defendants were claiming to be sole owners of copyright interests in the following? (answer yes or no to each)

Medieval Spawn:

No

Cogliostro:

No

Angela

No

Angela issues 1, 2 and 3

No

Spawn issue 9

No

Spawn issue 26

No

00233

3. Did the plaintiff and the McFarlane defendants enter into a contract in 1992?

Answer:

Yes
(yes or no)

IF YOU ANSWERED QUESTION 3 "YES"
ANSWER QUESTION 4. OTHERWISE
PROCEED TO QUESTION 5.

4. Did the McFarlane defendants breach the 1992 contract?

Answer:

Yes
(yes or no)

5. Did the plaintiff and the McFarlane defendants enter into a contract in 1997?

Answer:

Yes
(yes or no)

IF YOU ANSWERED QUESTION 5 "YES"
ANSWER QUESTION 6 AND PROCEED TO
QUESTION 12. OTHERWISE PROCEED TO
QUESTION 7.

6. Did the McFarlane defendants breach the 1997 contract?

Answer:

Yes
(yes or no)

IF YOU ANSWERED QUESTION 6 PROCEED
TO QUESTION 12.

7. Did the McFarlane defendants make a promise to plaintiff Gaiman which they should have expected would induce action or forbearance by him?

Answer:

(yes or no)

IF YOU ANSWERED QUESTION 7 "YES"
ANSWER QUESTION 8. OTHERWISE
PROCEED TO QUESTION 10.

8. Did the promise by the McFarlane defendants induce such action or forbearance by plaintiff Gaiman?

Answer:

(yes or no)

IF YOU ANSWERED QUESTION 8 "YES"
ANSWER QUESTION 9. OTHERWISE
PROCEED TO QUESTION 10.

9. Can injustice be avoided only by enforcing the McFarlane defendants' promise?

Answer: _____
(yes or no)

10. Did defendants accept and retain benefits from plaintiff under circumstances where it would be inequitable to retain them without paying plaintiff the value thereof?

Answer: _____
(yes or no)

11. Did plaintiff Gaiman accept and retain benefits from the McFarlane defendants under circumstances where it would be inequitable to retain the benefit of them without paying defendant the value thereof.

Answer: _____
(yes or no)

12. Was defendants' failure to identify plaintiff Gaiman as a co-author of *Spawn* issue 26, *Spawn* volume 6 or *Pathway to Judgement* a false description or representation of the origin of the work?

Answer:

Yes
(yes or no)

IF YOU ANSWERED QUESTION 12 "YES"
ANSWER QUESTION 13. OTHERWISE
PROCEED TO QUESTION 14.

13. Does plaintiff Gaiman believe that defendants' failure to identify him as a co-author of *Spawn* issue 26, *Spawn* volume 6 or *Pathway to Judgement* is likely to damage him?

Answer:

Yes
(yes or no)

14. Did plaintiff Gaiman consent in writing to the use of his name and biographical information on *Angela's Hunt*?

Answer:

No
(yes or no)

15. Did plaintiff Gaiman make misrepresentations or omissions of material fact to defendant concerning his DC Comics contract during the negotiations of the 1997 contract?

Answer: No
(yes or no)

IF YOU ANSWERED QUESTION 15 "YES"
ANSWER QUESTION 16. OTHERWISE
PROCEED NO FURTHER.

16. Did plaintiff Gaiman make the misrepresentation knowing it was untrue or recklessly without caring whether it was true or untrue?

Answer: _____
(yes or no)

IF YOU ANSWERED QUESTION 16 "YES"
ANSWER QUESTION 17. OTHERWISE
PROCEED NO FURTHER.

17. Did plaintiff Gaiman make the misrepresentation with the intent to deceive and to induce defendants to act on it?

Answer: _____
(yes or no)

IF YOU ANSWERED QUESTION 17 "YES"
ANSWER QUESTION 18. OTHERWISE
PROCEED NO FURTHER.

18. Did defendants believe such misrepresentation to be true and justifiably rely upon it to their pecuniary damage?

Answer: _____
(yes or no)

Signed this 3rd day of October, 2002

Mary Pachreiner
Foreperson